(18)

No. 90-1090-CFX
Status: GRANTED

Title: Immigration and Naturalization Service, et al., Petitioners
v.
National Center for Immigrants' Rights, Inc., et al.

Docketed:
January 7, 1991

Court: United States Court of Appeals for the Ninth Circuit

Counsel for petitioner: Solicitor General

Counsel for respondent: Schey,Peter A., Gzesh,Susan, Perillie,Patrice

40 printed copies ea pet & appd 112390 ext until 010591 (SAT) by O'Connor, J.-CITED 010691-SUN

Entry	Date	Note	Proceedings and Orders
1	Nov 21 1990	G	Application (A90-388) to extend the time to file a petition for a writ of certiorari from December 6, 1990 to January 21, 1991, submitted to Justice O'Connor.
2	Nov 23 1990		Application (A90-388) granted by Justice O'Connor extending the time to file until January 5, 1991.
3	Dec 26 1990	D	Application (A90-388) to extend further the time to file a petition for a writ of certiorari from January 5, 1991 to January 21, 1991, submitted to Justice O'Connor.
4	Dec 31 1990		Application (A90-388) denied by Justice O'Connor.
5	Jan 7 1991	G	Petition for writ of certiorari filed.
6	Jan 7 1991		Appendix of petitioner filed.
8	Jan 25 1991		Order extending time to file response to petition until March 9, 1991.
9	Mar 9 1991		Brief of respondents Natl. Center for Immigrants' Rights, et al. in opposition filed.
10	Mar 13 1991		DISTRIBUTED. March 29, 1991
11	Mar 19 1991	X	Reply brief of petitioner INS, et al. filed.
12	Apr 1 1991		Petition GRANTED. limited to Question 2 presented by the petition.
			**********
13	May 13 1991		Joint appendix filed.
14	May 13 1991		Brief of petitioners INS, et al. filed.
16	May 29 1991		Order extending time to file brief of respondent on the merits until July 12, 1991.
17	Jul 12 1991		Brief amicus curiae of International Human Rights Law Group filed.
18	Jul 12 1991		Brief amicus curiae of American Bar Association filed.
19	Jul 12 1991		Brief amicus curiae of American Immigration Lawyers Association filed.
20	Jul 12 1991		Brief of respondent Natl. Center for Immigrants' Rights, Inc., et al. filed.
21	Aug 21 1991		CIRCULATED.
22	Sep 3 1991	X	Reply brief of petitioner Natl. Center for Immigrants' Rights, et al. filed.
23	Sep 5 1991		SET FOR ARGUMENT WEDNESDAY, NOVEMBER 13, 1991.(4TH CASE)
24	Sep 10 1991		Record filed.
		*	1 Box - Original record and proceedings - United States

204

No. 90-1090-CFX

Entry	Date	Note	Proceedings and Orders
			District Court, Central District of California.
25	Sep 11 1991		Record filed.
		*	Certified record and briefs - United States Court of Appeals for the Ninth Circuit.
26	Nov 13 1991		ARGUED.

PETITION FOR WRIT OF CERTIORARI

90-1090

No. (1)

Supreme Court, U.S.
FILED
JAN 7 1991
JOSEPH F. SPANIOL, JR.
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1990

IMMIGRATION AND NATURALIZATION SERVICE, ET AL.,
PETITIONERS

v.

NATIONAL CENTER FOR IMMIGRANTS' RIGHTS, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

KENNETH W. STARR
Solicitor General

STUART M. GERSON
Assistant Attorney General

DAVID L. SHAPIRO
Deputy Solicitor General

STEPHEN J. MARZEN
Assistant to the Solicitor General

BARBARA L. HERWIG
JOHN F. DALY
Attorneys
Department of Justice
Washington, D.C. 20530
(202) 514-2217

QUESTIONS PRESENTED

A provision of the Immigration and Nationality Act, 8 U.S.C. 1252(a)(1), authorizes the release of aliens, pending determination of deportability, on bonds containing "such conditions as the Attorney General may prescribe." The provision also limits judicial review of "any determination of the Attorney General concerning * * * release on bond" to "habeas corpus proceedings." The questions presented are:

1. Whether this provision bars the exercise of federal question jurisdiction, under 8 U.S.C. 1329 or 28 U.S.C. 1331, over an action challenging the Attorney General's promulgation of a rule concerning a condition of release of aliens on bond pending a final decision on deportability.

2. Whether the provision prohibits promulgation of a rule generally requiring that release bonds contain a condition forbidding unauthorized employment pending determination of deportability.

PARTIES TO THE PROCEEDING

Petitioners, defendants below, are the Immigration and Naturalization Service; Gene McNary, Commissioner of the Immigration and Naturalization Service; and Richard Thornburgh, Attorney General of the United States. Respondents, plaintiffs below, are National Center for Immigrants' Rights, Inc.; American Friends Service Committee; El Rescate (The Rescue); Central American Refugee Center; El Concilio Manzo; Willamette Valley Immigration Project; Southern California Ecumenical Council; Centro Presente, Inc.; Tucson Ecumenical Council; Hermandad Nacional Mexicana; Coalition for Visas and Rights for the Undocumented; Centro Para Immigrantes de Houston; International Institute of Boston; Center for Immigrants Rights; Imperial Valley Immigration Project; United Automobile, Aerospace and Agricultural Implement Workers of America Local 645; and the following individuals: Santos Adalberto Lopez-Duran, Julio Fernando Lorine-Garcia, Raphael Antonio Perez, Raul Armando Marroquin, Ricardo Delgado Osegueda (or Oseguena), Mirza Odilia Hernandez Diaz, Maximiliano Martinez Oriana (or Orellana), Rosa Maria Tovar Rivas (or Tobar Rivas), Dennis Gillermo Vanegas, Antonio Mendoza Romero, Migel (or Miguel) Angel Gomez Vasquez (or Gomez-Vasquez), Fidel Angel Henriquez Duran, Daniel Antonio Garcia Reyes, Ana Berta Martinez, Dionisio Navarette Marlos (or Merlos), and Jane Doe I (an alien who claims to be deterred from filing for benefits with the Immigration and Naturalization Service because of fear that the regulation at issue would result in her indefinite detention).

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	2
Statutory and regulatory provisions involved	2
Statement	2
Reasons for granting the petition	13
Conclusion	28

TABLE OF AUTHORITIES

Cases:

American Hospital Ass'n v. *NLRB*, 899 F.2d 651 (7th Cir. 1990), cert. granted, 111 S. Ct. 242 (1990)	27
American Trucking Ass'ns, Inc. v. *Atchison, T. & S. F. Ry.*, 387 U.S. 397 (1967)	23
Ayuda, Inc. v. *Thornburgh*, 880 F.2d 1325 (D.C. Cir. 1989), petition for cert. pending, No. 89-1018	16
Califano v. *Yamasaki*, 442 U.S. 682 (1979)	13
Carlson v. *Landon*, 342 U.S. 524 (1952)	5, 6
Elkins v. *Moreno*, 435 U.S. 647 (1978)	3
FPC v. *Texaco Inc.*, 377 U.S. 33 (1964)	27
Finley v. *United States*, 109 S. Ct. 2003 (1989)	14
Flores v. *Meese*, 906 F.2d 396, amended, 913 F.2d 1315 (9th Cir. 1990), withdrawn on grant of reh'g, No. 88-6249 (Nov. 19, 1990)	12, 22
Fook Hong Mak v. *United States*, 435 F.2d 728 (2d Cir. 1970)	26
Hagans v. *Levine*, 415 U.S. 528 (1974)	15
Haitian Refugee Center v. *Smith*, 676 F.2d 1023 (5th Cir. 1982)	15, 16
Hallstrom v. *Tillamook County*, 110 S. Ct. 304 (1989)	16
Heckler v. *Campbell*, 461 U.S. 458 (1983)	27
INS v. *Delgado*, 466 U.S. 210 (1984)	17
INS v. *Pangilinan*, 486 U.S. 875 (1988)	16
INS v. *Rios-Pineda*, 471 U.S. 444 (1985)	18

Cases—Continued: Page

Jean v. *Nelson*, 727 F.2d 957 (11th Cir. 1984), aff'd, 472 U.S. 846 (1985) 15, 16
Liacakos v. *Kennedy*, 195 F. Supp. 630 (D.D.C. 1961) 20
NLRB v. *Bell Aerospace Co.*, 416 U.S. 267 (1974) 26
Pension Benefit Guaranty Corp. v. *LTV Corp.*, 110 S. Ct. 2668 (1990) 23
SEC v. *Chenery Corp.*, 332 U.S. 194 (1947) 26
Saxbe v. *Bustos*, 419 U.S. 65 (1974) 19
Sheldon v. *Sill*, 49 U.S. (8 How.) 441 (1850) 14
Sure-Tan, Inc. v. *NLRB*, 467 U.S. 883 (1984) 10, 13, 17, 18
Toscano-Rivas, In re, 14 I. & N. Dec. 550 (A.G. 1974) 24
Udall v. *Tallman*, 380 U.S. 1 (1965) 19
United States v. *Storer Broadcasting Co.*, 351 U.S. 192 (1956) 27
United States v. *Verdugo-Urquidez*, 110 S. Ct. 1056 (1990) 15

Constitution, statutes, and regulations:

U.S. Const.:
Amend. IV 17
Amend. V (Due Process Clause) 15
Immigration and Nationality Act of 1952, ch. 477, 66 Stat. 163 6
§ 101, 8 U.S.C. 1101 *et seq.* 3
§ 103(a), 8 U.S.C. 1103(a) 2, 21, 24
§ 106, 8 U.S.C. 1105a 15, 16
§ 203(a)(1), 8 U.S.C. 1153(a)(1) 4
§ 203(a)(2), 8 U.S.C. 1153(a)(2) 4
§ 203(a)(4), 8 U.S.C. 1153(a)(4) 4
§ 203(a)(5), 8 U.S.C. 1153(a)(5) 4
§ 210(e), 8 U.S.C. 1160(e) 16
§ 212(a)(14), 8 U.S.C. 1182(a)(14) 2, 3, 4
§ 241(a), 8 U.S.C. 1251(a) 5
§ 241(a)(1), 8 U.S.C. 1251(a)(1) 2, 4
§ 241(a)(9), 8 U.S.C. 1251(a)(9) 4
§ 242(a), 8 U.S.C. 1252(a) 5, 6, 9, 23

Statutes and regulations—Continued: Page

§ 242(a)(1), 8 U.S.C. 1252(a)(1) ..... *passim*
§ 245(c)(2), 8 U.S.C. 1255(c)(2) 4
§ 264(e), 8 U.S.C. 1301(e) 19
§ 279, 8 U.S.C. 1329 15
Immigration and Nationality Act Amendments of 1965, Pub. L. No. 89-236, § 10(a), 79 Stat. 917-918 4
Immigration and Nationality Act Amendments of 1976, Pub. L. No. 94-571, § 6, 90 Stat. 2705-2706 4
Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359 4
Internal Security Act of 1950, ch. 1024, § 23, 64 Stat. 1011 ..... 6, 22-23
8 U.S.C. 156 (1940) 5, 6, 22
18 U.S.C. 3142(c) 22
18 U.S.C. 3142(c)(1) 22
18 U.S.C. 3142(g) 22
18 U.S.C. 3142(h) 22
28 U.S.C. 1331 15
8 C.F.R.:
Pt. 2:
Section 2.1 7
Pt. 103:
Section 103.6 2
Section 103.6(a)(2) 10
Section 103.6(a)(2)(iii) (1983) 7
Pt. 109:
Section 109.1 (1984) 7, 10
Section 109.1(b)(1)-(7) (1983) 7
Section 109.1(b)(8) (1984) 7
Pt. 208 8
Pt. 211:
Section 211.1(b) 19
Pt. 212:
Section 212.1 20
Section 212.1(c) 20

Regulations—Continued:	Page
Pt. 214:	
Section 214.1(e)	4
Pt. 274a:	
Section 274a.12	7
Section 274a.12(a)	7, 19
Section 274a.12(b)	7, 19, 20
Section 274a.12(c)	7
Section 274a.12(c)(8)	8
Section 274a.12(c)(13)	7, 10
Miscellaneous:	
48 Fed. Reg. (1983):	
p. 8820	8
pp. 8820-8821	7
p. 51,142	8
pp. 51,142-51,144	2, 8
p. 51,143	8, 19
p. 51,144	7
H.R. 10, 81st Cong., 1st Sess. (1949)	5, 6, 23
H.R. Rep. No. 1192, 81st Cong., 1st Sess. (1949)	6
H.R. Rep. No. 1365, 82d Cong., 2d Sess. (1952)	3, 6, 15
H.R. Rep. No. 1553, 94th Cong., 2d Sess. (1976)	4
H.R. Rep. No. 682, 99th Cong., 2d Sess. Pt. 1, (1985)	4
Immigration Reform and Control Act of 1985: Hearings on S. 1200 Before the Subcomm. on Immigration and Refugee Policy of the Senate Comm. on the Judiciary, 99th Cong., 1st Sess. (1985)	24
S. Rep. No. 2239, 81st Cong., 2d Sess. (1950)	6
S. Rep. No. 748, 89th Cong., 1st Sess. (1965)	4

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IMMIGRATION AND NATURALIZATION SERVICE, ET AL., PETITIONERS

v.

NATIONAL CENTER FOR IMMIGRANTS' RIGHTS, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The Solicitor General, on behalf of the Immigration and Naturalization Service, its Commissioner Gene McNary, and Attorney General Richard Thornburgh, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals, App. 1a-60a, is reported at 913 F.2d 1350. An earlier opinion in the same appeal, regarding an issue of appellate jurisdiction, App. 61a-65a, is reported at 892 F.2d 814. The opinion of the district court, App. 66a-70a, is unreported.

Several additional opinions were issued by the courts below before this Court's 1987 order, which granted our previous petition for a writ of certiorari, vacated the judgment below, and remanded the case to the court of appeals. See 481 U.S. 1009. The court of appeals decision vacated by this Court, App. 71a-80a, is reported at 791 F.2d 1351. The district court order from which that

appeal was taken, App. 81a-95a, is reported at 644 F. Supp. 5. An earlier opinion of the court of appeals affirming the issuance of a preliminary injunction, App. 96a-108a, is reported at 743 F.2d 1365. The district court's opinion granting the preliminary injunction, App. 109a-118a, is unreported.

JURISDICTION

The judgment of the court of appeals was entered on September 7, 1990. On November 23, 1990, Justice O'Connor extended the time for filing a petition for a writ of certiorari to and including January 5, 1991 (a Saturday).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

Sections 103(a), 212(a)(14), 241(a)(1), and 242(a)(1) of the Immigration and Nationality Act of 1952, 8 U.S.C. 1103(a), 1182(a)(14), 1251(a)(1), and 1252(a)(1), are reproduced at App. 119a-122a. 8 C.F.R. 103.6 and 274a.12 are reproduced at App. 122a-136a. The notice promulgating the regulation at issue here, 48 Fed. Reg. 51,142-51,144 (1983) is reproduced at App. 137a-149a.

STATEMENT

Respondents—non-profit organizations, a union local, and individuals in deportation proceedings—filed an action in 1983 challenging a regulation of the Attorney General. The regulation provides that when an alien is released from custody pending deportation or exclusion proceedings, the bond obtained to secure the alien's release must include a condition forbidding unauthorized employment. Ten days after the regulation took effect, the district court issued a nationwide preliminary injunction barring its enforcement. The court of appeals affirmed, subject to certification of a nationwide class. On remand, the district court certified a nationwide class of "all persons who have been or may in the future be denied the right to work" by the regulation, App. 3a,

and made the nationwide injunction permanent. The court of appeals affirmed the permanent injunction.

Because the nationwide injunction seriously restricted the Attorney General's authority to protect American workers against unauthorized employment, the Solicitor General filed a petition for a writ of certiorari. This Court granted the petition, vacated the lower court's judgment, and remanded the case for further consideration in light of the Immigration Reform and Control Act of 1986 (IRCA). On remand, the district court reentered its nationwide injunction and a divided panel of the court of appeals affirmed.

1. a. The Immigration and Nationality Act of 1952 (INA), 8 U.S.C. 1101 *et seq.*, governs all aspects of admission of aliens to the United States. See H.R. Rep. No. 1365, 82d Cong., 2d Sess. 27 (1952). See generally *Elkins* v. *Moreno*, 435 U.S. 647, 664-665 (1978). Among other requirements, it conditions entry of aliens on compliance with limitations related to employment in the United States, thus reflecting Congress's consistent policy to

> provide for the protection of American labor against an influx of aliens entering the United States for the purpose of performing skilled or unskilled labor where the economy of individual localities is not capable of absorbing them at the time they desire to enter this country.

H.R. Rep. No. 1365, *supra*, at 51.

To implement this policy, the Act conditions entry of each immigrant alien who intends to work in the United States—with the exception of close relatives of U.S. citizens and lawful permanent resident aliens [1]—on the

[1] Section 1182(a)(14) states that it "shall apply to preference immigrant aliens described in section 1153(a)(3) and (6) of this title, and to nonpreference immigrant aliens described in section 1153(a)(7) of this title." The immigrant aliens to whom this sentence refers include all immigrants who may be allotted visas under the numerical limitations, except the relatives of citizens or